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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

**RECEIVED**

**MAY - 7 1998**

**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**

In the Matter of )

Applications of WorldCom, Inc. and )  
MCI Communications Corporation )  
for Transfer of Control of )  
MCI Communications Corporation to )  
WorldCom, Inc. )

CC Docket No. 97-211

To: The Commission

**COMMENTS OF GTE ON THE PROPOSED  
PROTECTIVE ORDER FILED BY WORLD COM AND MCI**

GTE Service Corporation, its affiliated telecommunications companies,<sup>1</sup> and GTE Internetworking (collectively "GTE"), by their attorneys, respectfully submit their Comments on the proposed protective order filed by WorldCom, Inc. ("WorldCom") and MCI Communications Corporation ("MCI") (collectively, the "Applicants") in the above-captioned proceeding. On April 27, 1998, the Applicants filed a letter seeking confidential treatment of certain materials requested by the Commission on April 21, 1998 and submitted a proposed protective order. While this as an appropriate, necessary and positive first step, the questions raised by this merger can not be

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<sup>1</sup> GTE Alaska, Incorporated, GTE Arkansas Incorporated, GTE California Incorporated, GTE Florida Incorporated, GTE Hawaiian Telephone Company Incorporated, The Micronesian Telecommunications Corporation, GTE Midwest Incorporated, GTE North Incorporated, GTE Northwest Incorporated, GTE South Incorporated, GTE Southwest Incorporated, Contel of Minnesota, Inc., Contel of the South, Inc., GTE Communications Corporation, and GTE Hawaiian Tel International Incorporated.

answered without examination of all the documents supplied by the Applicants in response to requests by the Department of Justice ("DOJ") during its pre-merger review process under the Hart-Scott-Rodino Antitrust Improvements Act ("HSR"). Accordingly, while GTE seeks only minor modification of the proposed protective order supplied by the Applicants regarding the "CID Responses," GTE urges the Commission to expand its inquiry to include all documents supplied by the Applicants in response to the DOJ's "second request" for HSR documentation and Item 4(c) of their pre-merger notification filing.

**I. THE PROTECTIVE ORDER EXCLUDES PARTICIPATION BY RELEVANT PARTIES AND UNNECESSARILY PREVENTS DISCUSSION OF MATERIALS WITH THE DEPARTMENT OF JUSTICE**

GTE agrees in principle with the proposed protective order. However, the Applicants have narrowly proscribed those who would be permitted access to protected documents so as to exclude "inside" attorneys and certain outside counsel whose participation is relevant, necessary and not inconsistent with the interests of confidentiality. Specifically, the Applicants suggest that confidential documents should only be reviewed by "outside counsel of record for the parties in this proceeding who are actively engaged in the conduct of this proceeding."<sup>2</sup> In doing so, the Applicants would prevent all "inside" counsel of GTE and other petitioners from examining the relevant materials. This overly broad categorization exceeds the precautions necessary to ensure the confidentiality of the CID materials and acts as a significant encumbrance to their full and open review by GTE and others. Similarly, the Applicants would prevent

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<sup>2</sup> Proposed protective order at ¶15.

review by outside counsel who are not of record, but who nevertheless play an integral role in preparing the petitioners' analyses. GTE therefore suggests that access to protected documents be offered to "outside counsel of record, in-house counsel who are actively engaged in the conduct of this proceeding, or counsel otherwise assisting the parties in this proceeding who are actively engaged in the conduct of this proceeding."<sup>3</sup> (See attachment 2 for proposed changes).

Additionally, GTE objects to the overly broad limitations that the Applicants have sought to place on the legitimate use of protected materials. Specifically, GTE objects to the Applicants' attempt to prevent petitioners from using any of the protected information "for any other purpose, including . . . governmental . . . or other administrative, regulatory or judicial proceedings." This provision would have the effect of restricting petitioners from discussing the contents of protected materials with DOJ officials, who have for some time been engaged in an independent investigation of these matters, upon whose request these documents were initially produced, and to whom the contents of these documents are already known.

GTE suggests that the Commission should encourage informal discussion between officials at the FCC and DOJ who are investigating the proposed merger of WorldCom and MCI, as well as between those agencies and petitioners. To foster this exchange, the protective order should explicitly permit parties to use the protected

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<sup>3</sup> Access by inside counsel is consistent with Commission precedent. See, Protective Order, *In re American Telephone and Telegraph Company and Craig O. McGaw Applications for Transfer of Control*, file No. ENF-93-4 at ¶3 (May 13, 1994) (Attachment 1).

information in connection with communications and submissions to the DOJ as they pertain to that agency's review of the antitrust aspects of the Applicants' proposed merger. (See attachment 3 for proposed changes).


**II. THE COMMISSION SHOULD ENLARGE ITS REVIEW TO INCLUDE "SECOND REQUEST" DOCUMENTS AND 4(C) MATERIALS SUBMITTED BY THE APPLICANTS TO DOJ**

There can be no doubt that the production and review of the CID documents encompassed by the Commission's recent requests will add to the discussion regarding the proposed merger between WorldCom and MCI. Those documents, however, represent only a part of the documents that the Justice Department has deemed relevant to its examination of the transaction. The threat to competition posed by this merger (particularly to the provision of Internet backbone and long-distance services) requires a level of scrutiny that can not be achieved without the review of all documents submitted by the Applicants to the DOJ during the HSR process -- including those associated with the so-called "second request" issued by DOJ and those provided in response to Item 4(c) of the pre-merger notification filing. The review of this clearly pertinent information, not only by the Commission but by petitioners as well, would provide a more complete picture of the competitive consequences of the largest telecommunications merger in history. It would also go far to obtain the facts and figures that the Applicants have so far been unwilling to provide in their pleadings and various ex parte submissions. The stakes involved are too high to proceed in the absence of all potentially determinative information. Therefore GTE encourages the Commission to expand its document request and, consequently, the scope of access provided to petitioners, to include all documents filed by WorldCom and MCI pursuant

to the Department of Justice's HSR request and in response to Item 4(c) of the pre-merger notification filing.

Respectfully submitted,

**GTE SERVICE CORPORATION**

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May 7, 1998

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of

AMERICAN TELEPHONE AND TELEGRAPH COMPANY and  
CRAIG O. MCCAW

APPLICATIONS FOR CONSENT TO TRANSFER OF CONTROL OF  
RADIO LICENSES

File No. ENF-93-44

PROTECTIVE ORDER

Adopted: May 13, 1994

By the Chief, Formal Complaints and Investigations Branch, Enforcement Division,  
Common Carrier Bureau:

1. On May 13, 1994, the Bureau directed the applicants in the above-captioned proceeding, American Telephone and Telegraph Company and Craig O. McCaw, to make available for review and inspection by the staff and counsel for the parties, documents and information filed by the applicants with the Department of Justice ("DOJ") and the Federal Trade Commission ("FTC") pursuant to the pre-merger review process under the Hart-Scott-Rodino Antitrust Improvements Act.<sup>1</sup> These materials may represent or contain confidential or proprietary information. To insure that documents and materials considered by the applicants to be confidential and proprietary are afforded protection, the Bureau hereby enters this Protective Order:

2. Non-disclosure of Stamped Confidential Documents. Except with the prior written consent of the applicants or other person originally designating a document to be stamped as a confidential document, or as hereinafter provided under this order, no stamped confidential document may be disclosed to any person.

A "stamped confidential document" means any document which bears the legend (or which shall otherwise have had the legend recorded upon it in a way that brings its attention to a reasonable examiner) "CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER IN File No. ENF-93-44, before the Federal Communications Commission" to signify that it contains information believed to be subject to protection under the Commission's rules. For purposes of this order, the term "document" means all written, recorded, or graphic material, whether produced or created by a party or another person, whether produced pursuant to the Commission's rules, subpoena, by agreement, or otherwise. Documents that quote, summarize, or contain materials entitled to protection may be accorded status as a stamped confidential document, but, to the extent feasible, shall be prepared in such a manner that the confidential information is bound separately from that not entitled to protection.

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<sup>1</sup> Letter from Gregory A. Weiss to Francine J. Berry (May 13, 1994).

3. Permissible Disclosure. Notwithstanding paragraph 2, stamped confidential documents may be disclosed to counsel of record for the parties in this proceeding, including in-house counsel who are actively engaged in the conduct of this proceeding; to the partners, associates, secretaries, paralegal assistants, and employees of such an attorney to the extent reasonably necessary to render professional services in this proceeding; to persons with prior knowledge of the documents or the confidential information contained therein, and their agents; and to Commission officials involved in this proceeding.<sup>2</sup> Subject to the provisions of subparagraph c) below, such documents may also be disclosed:

(a) to any person designated by the Commission in the interest of justice, upon such terms as the Commission may deem proper; and

(b) in the event the Commission orders that depositions may be taken, to persons noticed for depositions or designated as trial witnesses to the extent reasonably necessary in preparing to testify to outside consultants or experts retained for the purpose of assisting counsel in the proceeding; to employees of parties involved solely in one or more aspects of organizing, filing, coding, converting, storing, or retrieving data or designing programs for handling data connected with this proceeding, including the performance of such duties in relation to a computerized litigation support system; and to employees of third-party contractors performing one or more of these functions; provided, however, that in all such cases the individual to whom disclosure is to be made has signed a form containing: (1) a recital that the signatory has read and understands this order; and (2) a recital that the signatory understands that unauthorized disclosures of the stamped confidential documents is prohibited.

(c) Before disclosing a stamped confidential document to any person listed in subparagraph (a) or (b) who is a competitor (or an employee of a competitor) of the party that so designated the document, the party wishing to make such disclosure shall give at least ten days' advance notice in writing to the counsel who designated such information as confidential, stating the names and addresses of the person(s) to who the disclosure will be made, identifying with particularity the documents to be disclosed, and stating the purposes of such disclosure. If, within the ten-day period, a motion is filed objecting to the proposed disclosure, disclosure is not permissible until the Commission has denied such motion.

4. Declassification. A party (or aggrieved entity permitted by the Commission to intervene for such purpose) may apply to the Commission for a ruling that a document (or category of documents) stamped as confidential is not entitled to such status and protection. Applicants or other person that designated the document as confidential shall be given notice of the application and an opportunity to respond. To maintain confidential status, the proponent of confidentiality must show by a preponderance of the evidence that there is good cause for the document to have such protection.

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2 Disclosure may not be made to counsel involved in any related proceeding between the parties pending before the Commission or in courts, except upon specific Commission approval.

5. Confidential Information in Depositions. In the event the Commission orders that depositions may be taken in this proceeding:

(a) A deponent may during the deposition be shown, and examined about, stamped confidential documents if the deponent already knows the confidential information contained therein or if the provisions of paragraph 3(c) above are complied with. Deponents shall not retain or copy portions of the transcripts of their depositions that contain confidential information not provided by them or the entities they represent unless they sign the form prescribed in paragraph 3(b) above. A deponent who is not a party or a representative of a party shall be furnished a copy of this order before being examined about, or asked to produce, potentially confidential documents.

(b) Parties (and deponents) may, within fifteen (15) days after receiving a deposition transcript, designate pages of the transcript (and exhibits thereto) as confidential. Confidential information within the deposition transcript may be designated by underlining the portions of the pages that are confidential and marking such pages with the following legend: "Confidential-subject to protection pursuant to Commission Order." Until expiration of the 15-day period, the entire deposition will be treated as subject to protection against disclosure under this order. If no party or deponent timely designates confidential information in a deposition, then none of the transcript or its exhibits will be treated as confidential; if a timely designation is made, the confidential portions and exhibits shall be filed under seal separate from the portions and exhibits not so marked.

6. Confidential Information Filed in the Record. Subject to the Federal Rules of Evidence, stamped confidential documents and other confidential information may be offered in the record made by the parties and submitted to the Commission in this proceeding, provided that such confidential information is furnished under seal. The Commission will then determine whether the proffered evidence should continue to be treated as confidential information.

7. Filing. If confidential documents are submitted to the Commission in accordance with paragraph 6, the materials shall be filed under seal and shall remain sealed while in the Secretary's office or such other place as the Commission may designate so long as they retain their status as stamped confidential documents.

8. Subpoena by Courts or Other Agencies. If a court or another administrative agency subpoenas or orders production of stamped confidential documents which a party has obtained under terms of this order, such party shall promptly notify the party or other person who designated the document as confidential of the pendency of such subpoena or order.

9. Client Consultation. Nothing in this order shall prevent or otherwise restrict counsel from rendering advice to their clients and, in the course thereof, relying generally on examination of stamped confidential documents; provided, however, that in rendering such advice and otherwise communicating with such client, counsel shall not make specific disclosure of any item so designated except pursuant to the procedures of paragraph 3(b) and (c) above.



10. Prohibited Copying. If a document contains information so sensitive that it should not be copied by anyone, it shall bear the additional legend "Copying Prohibited." Application for relief from this restriction against copying may be made to the Commission, with notice to counsel so designating the document.

11. Use. Persons obtaining access to stamped confidential documents under this order shall use the information only for preparation and the conduct of this proceeding and any subsequent judicial proceeding, and shall not use such information for any other purpose, including business, governmental, commercial, or other administrative or judicial proceedings.

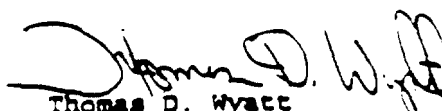
12. Non-Termination. The provisions of this order shall not terminate at the conclusion of this proceeding. Within 120 days after final conclusion of all aspects of this proceeding, stamped confidential documents and all copies of same (other than exhibits of record, if any) shall be returned to the party or person which produced such documents, or, at the option of the producer (if it retains at least one copy of the same), destroyed. All counsel of record shall make certification of compliance herewith and shall deliver the same to counsel for the party who produced the documents not more than 150 days after final termination of this proceeding.

13. Modification Permitted. Nothing in this order shall prevent any party or other person from seeking modification of this order.

14. Responsibility of Attorneys. The attorneys of record are responsible for employing reasonable measures to control, consistent with this order, duplication of, access to, and distribution of copies of stamped confidential documents. Parties shall not duplicate any stamped confidential document except working copies and for filing at the Commission under seal.

15. This Order is issued pursuant to Sections 4(i), 310(d), and 702(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 310(d), 602(d), and authority delegated under Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, and is effective upon its adoption.

FEDERAL COMMUNICATIONS COMMISSION



Thomas D. Wyatt  
Chief, Formal Complaints and  
Investigations Branch  
Common Carrier Bureau

## **Attachment 2**

Insert at ¶3:

Subject to the requirements of paragraph 5, Stamped Confidential Documents may be reviewed by **outside counsel who are of record for the parties in this proceeding or are otherwise assisting parties in this proceeding and in-house counsel who are actively engaged in the conduct of this proceeding.** Subject to the requirements of paragraph 5 and subject to the obligation to secure the confidentiality of Stamped Confidential Documents in accordance with the terms of this order, such ~~outside~~ counsel may disclose Stamped Confidential Documents to: (i) the partners, associates, secretaries, paralegal assistants, and employees of such ~~outside~~ counsel to the extent reasonably necessary to render professional services in this proceeding; (ii) to Commission officials actively involved in this proceeding; (iii) to outside consultants or experts retained for the purpose of assisting counsel in these proceedings and ~~who are not employed by or affiliated in any way with any competitor~~ who are not involved in the analysis underlying the business decisions and who do not participate directly in the business decisions of any competitor of any Submitting Party; (iv) employees of counsel involved solely in one or more aspects of organizing, filing, coding, converting storing, or retrieving data or designing programs for handling data connected with this proceeding; and (v) employees of third-part contractors performing one or more of the functions identified in (iv) above. The Submitting Party shall make available for review the Stamped Confidential Documents at the offices of WorldCom's outside counsel, Swidler & Berlin, Chartered, 3000 K St., N.W., Suite 300, Washington, D.C. 20007-5116

### **ATTACHMENT 3**

Inseert at ¶11:

Persons obtaining access to Stamped Confidential Documents or Confidential Information under this order shall use the information solely for preparation and the conduct of this proceeding as delimited in paragraphs 4, 7, and 10 and any subsequent judicial proceeding arising directly from this proceeding, and shall not use such information for any other purpose, including business, governmental, commercial or other administrative, regulatory or judicial proceedings. **Parties will be permitted, however, to use these materials in connection with communications and submissions to the Department of Justice as they pertain to that agency's review of the antitrust aspects of the proposed merger of WorldCom and MCI.** Should a party that has properly obtained access to confidential information under this Protective Order violate any of its terms, that party shall immediately convey that fact to the Commission and to the Submitting Party. Further, should such violation consist of improper disclosure of Confidential Information, the violating party shall take all necessary steps to remedy the improper disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this Protective Order, including but not limited to denial of further access to Confidential Information in this proceeding, monetary forfeitures, suspension or disbarment from practice before the Commission, and revocation or non-renewal of Commission licenses and authorizations.

CERTIFICATE OF SERVICE

I hereby certify that on this 7<sup>th</sup> day of May, 1998, I caused copies of the foregoing Comments on the Proposed Protective Order to be delivered by first class U.S. mail to the following:

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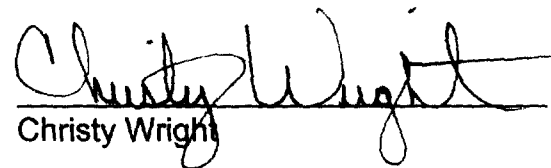
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